STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CW, and FW, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DOROTHY WARREN,

Respondent-Appellant.

UNPUBLISHED
September 17, 2002

No. 237131
Calhoun Circuit Court
Family Division
LC No. 00-001675-NA

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Respondent Dorothy Warren appeals as of right the trial court's order terminating her parental rights to her two minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). The children's father, Larry Warren (Warren), voluntarily relinquished his parental rights. He does not appeal. We affirm.

I. Basic Facts And Procedural History

The Family Independence Agency (FIA) first learned of the children in April 2000 after CW alleged that her father had sexually abused her. A medical examination confirmed CW's allegations. Though CW did not claim that respondent was at all involved in the abuse or knew that it was happening, the family court assumed jurisdiction over the children after Warren pleaded no contest to the allegations in the complaint. The family court then placed the children with respondent after Larry Warren left the home.

While this case was ongoing, the FIA learned that respondent's home, where the children were living, was filthy. Respondent initially resisted the assistance the FIA offered her, so the FIA took emergency custody of the children in August 2000. Respondent was able to improve the condition of her home somewhat by September 2000. The FIA, however, asked respondent to continue cleaning and repairing the home, and to submit to a psychological evaluation. According to the FIA, by the next review hearing in December 2000, respondent had made no further progress. Warren continued to be in the home and respondent would not allow FIA case workers into the home to inspect it. Nor had she submitted to the psychological evaluation, as ordered. In January 2001, Adult Protective Services even removed respondent's mother and

elderly aunt, who were also residing in the home, because the conditions in the house were so unsanitary.

The family court held the next dispositional review hearing in March 2001. At that time, petitioner's foster care worker, Vicki Harrell, stated that she had visited the house that morning and that it continued to need extensive cleaning. FIA had previously offered respondent a dumpster, but she had refused. Harrell also maintained that respondent visited with the children regularly, but did not act appropriately. Respondent blamed CW for the allegations against Warren, who continued to reside in the home. The referee, finding that the FIA had failed to provide adequate counseling services to the children, rescheduled the permanency planning hearing after warning respondent to take advantage of services offered to her.

Respondent submitted to a psychological evaluation in April 2001, but the conditions in her home had not substantially improved. Consequently, the FIA filed a petition to terminate respondent's parental rights in July 2001. The family court held the termination hearing the next month, at which time Warren voluntarily relinquished his parental rights. FIA worker Lee Koteles and parent aid Mara Reen informed the family court of respondent's history with protective services, the initial condition of her home, and her initial resistance to services. Karen Booth-Hack provided additional information about Adult Protective Services removing the elderly adults from respondent's home in January 2001.

Dr. Randy Hugen, who evaluated respondent, also testified at the hearing. He said that he found respondent to be passive and she had poor coping skills. Because respondent avoided discussing Warren's alleged abuse of CW, Dr. Hugen believed that respondent was unlikely to be able to protect the children in vulnerable situations. He added that respondent had attended three family counseling sessions in June and July, but she and the children did not interact well during these session. He observed that CW was angry that respondent was still living with Warren. In any event, respondent had stopped attending counseling. In Dr. Hugen's opinion, respondent had a poor prognosis for improvement.

Harrell observed some of the same behavior in respondent and CW that Dr. Hugen had seen. Harrell said that respondent did not show affection to the children when visiting with them. CW did not want to visit with respondent because respondent did not believe her. Harrell also described respondent's home. Though respondent had improved the home and purchased furniture, the home continued to be unsuitable and unsanitary as late as July 2, 2001. Harrell's supervisor corroborated her description of the poor conditions. Harrell suggested that it was unlikely that the situation would change. Further, respondent was unwilling to work with her children's emotional issues and was still living with Warren. Harrell believed that termination was in the children's best interests because it would provide them with permanence.

The children's grandfather, Frank Warren, testified that respondent had made numerous improvements in the condition of the house. Respondent also testified that she had made improvements in the home and that the children would be safe if returned to her. She admitted that she had difficulty deciding whether to believe CW or her husband because she was not present when the alleged abuse occurred. She only knew of the physical injury to CW in March 2000 after a medical examination. Respondent also admitted that she and the children needed further counseling. She said that she had discontinued counseling only when Warren's attorney told her that it was not in her best interest and because she had previously been told not to speak

with CW about the abuse. Respondent conceded that she needed more time to work on her housekeeping skills, she had tried to keep a nice house, but the FIA wanted it to be "picture perfect."

The family court, relying on the testimony from respondent, Dr. Hugen, and Harrell, found that the FIA had provided clear and convincing evidence that the conditions leading to the initial adjudication continued to exist. For instance, even though respondent partially complied with renovating her home, she still had not provided a sanitary place for the children to live. The family court noted that respondent had discontinued mental health services, could not bond with the children during visitation, and refused to believe CW's allegations of abuse despite the physical evidence. The family court also noted that the FIA had provided services to respondent for almost seventeen months. In light of these factors, the family court found that it was unlikely that respondent would be able to provide proper care and custody within a reasonable time. It then found that termination of respondent's parental rights was in the children's best interests. Respondent now challenges the family court's findings.

II. Standard Of Review

Appellate courts review a family court's decision to terminate parental rights for clear error.[1]

III. Clear And Convincing Evidence

The family court must find clear and convincing evidence on the record proving that at least one statutory ground for termination exists before it terminates parental rights.[2] Once there is clear and convincing evidence of at least one statutory ground for termination, the family court "must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests."[3]

According to respondent, the family court erroneously wanted her to demonstrate that she could provide maximum care for her children when, in fact, she only had to prove that she would give them adequate care. We see no evidence in the record that the family court actually held her to a higher standard than allowed by law. The critical questions for termination under subsection (g) are whether respondent failed to provide proper care and custody for the children in the past, and whether she would fail to do so again within a reasonable time considering the children's ages. The family court plainly found that respondent had not provided proper care and custody of her children in the past because of the condition of her house, and despite some improvements, still had not provided them with an appropriate place to live at the time of the termination hearing. Dr. Hugen's testimony gave the family court no reason to believe that respondent would be able to correct these problems in the future, whether near or far.

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[1] *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

[2] MCL 712A.19b(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

[3] *Trejo*, *supra* at 354; MCL 712A.19b(5).

Respondent cites the major changes she made to her home, as well as the complications that barred her from attending more therapy and making additional changes, such as her job schedule and the fact that she was taking care of her mother while her mother was dying of cancer. While we can be sympathetic to the difficulties respondent experienced, the children had and have needs for proper care and custody irrespective of respondent's problems. Contrary to respondent's suggestion on appeal, the goals established in the parent/agency agreement were not arbitrary conditions with which respondent had to comply. These goals directly related to respondent's ability to fulfill the children's basic needs for a safe home, emotional support, and protection from further abuse. Her failure to meet these goals amply supports the family court's findings supporting termination under MCL 712A.19b(3)(g).

We need not consider whether the family court erred in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) because it needed only one statutory ground to terminate her parental rights.[4] Respondent does not argue that termination was contrary to the children's best interests.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly

[4] See *IEM*, *supra* at 450-451.